Calendar No. 287

99TH CONGRESS *1st Session* | SENATE | REPORT 99-136

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1986 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM (CIARDS) AND FOR OTHER PURPOSES

SEPTEMBER 11 (legislative day, SEPTEMBER 9), 1985.—Ordered to be printed

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Mr. GOLDWATER, from the Committee on Armed Services, and on behalf of Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1271]

The Committees on Armed Services and Governmental Affairs, to which was referred the bill (S. 1271), authorizing appropriations for fiscal year 1986 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same or portions thereof, reports favorably thereon with amendment(s), and recommends that the bill (as amended) do pass.

SEQUENTIAL REFERRAL OF S. 1271

The Select Committee on Intelligence reported S. 1271, the Intelligence Authorization Act for fiscal year 1986, on June 11, 1985. The legislation was jointly referred to the Committees on Armed Services, Foreign Relations, Governmental Affairs, and the Judiciary. The Committee on Foreign Relations was restricted to the consideration of section 604 and title VII; the Committee on Governmental Affairs was restricted to the consideration of section 603; and the Committee on the Judiciary was restricted to the consideration of title V. The Committees on Armed Services and Governmental Affairs have acted on the legislation and submit this joint report. The Committees on Foreign Relations and the Judiciary have taken no action on the legislation, and pursuant to the terms of a unanimous consent agreement establishing the expiration of the referral on September 11, 1985, should be discharged from further consideration of the legislation of that date.

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S403-3

S203-6

ACTION OF THE COMMITTEE ON ARMED SERVICES

The Committee on Armed Services has carefully reviewed the programs authorized by S. 1271 and reports the bill favorably without amendment as to the programmatic elements of the bill as reported by the Select Committee on Intelligence. The committee has, however, adopted an amendment to the legislation dealing with access to criminal history records for national security purposes.

The committee has had a longstanding concern about the adequacy of security practices in the Department of Defense. The recent arrest and indictment of several members and ex-members of the U.S. Armed Forces on espionage charges draws attention to the urgent need to address inadequate security practices of the Government.

The Permanent Subcommittee on Investigations of the Committee on Governmental Affairs held an extensive set of hearings into the question of the procedures and practices for granting security clearances by the Government. Those hearings disclosed a number of glaring shortcomings and the committee has made a number of recommendations.

One of the principal shortcomings discovered by this committee and the Permanent Subcommittee on Investigations was that State and local governments frequently did not make available criminal history records of individuals who are under consideration for security clearances. As a result, a person might be given a security clearance without the knowledge that he or she was a convicted felon. Obviously, this poses a grave risk that unreliable persons will be granted access to highly classified information. Accordingly, one of the recommendations made by the Permanent Subcommittee on Investigations is that a Federal law be enacted which requires State and local governments to provide criminal history records to authorized Federal officials conducting background investigations of individuals who are under consideration for security clearances.

Department of Defense witnesses raised this with the committee in hearings on June 26, and urged that corrective legislation be adopted.

For many years, local jurisdictions were quite forthcoming in making this information available to Federal investigators from the Defense Investigative Service [DIS], the Office of Personnel Management [OPM], and the Central Intelligence Agency [CIA].

However, in recent years a disturbing trend has developed. Local and State jurisdictions in increasing numbers are denying DIS, OPM, and CIA agents access to criminal history records or permitting access to records of convictions only—not records of arrests. Other jurisdictions are severely limiting the number of requests that can be made or delaying the process of these requests for a considerable period of time. The net result is that this important source of information is being seriously curtailed in many localities throughout the country.

For example, almost all of California refuses to cooperate with OPM and only provides DIS with conviction records. In Florida, 26 cities, including Miami, do not respond to requests by OPM for criminal history record information [CHRI]. The Metropolitan Police Department in the District of Columbia refuses to give any information beyond conviction data to either DIS or OPM.

This situation has far reaching and dangerous implications. Currently, the U.S. Government is unable to obtain State and local criminal records on applicants for some of the most sensitive positions in the military and other Government agencies that are entrusted with our Nation's national security. The Permanent Subcommittee on Investigations recent hearings showed the serious nature of espionage as seen in the *Christopher Boyce* case at TRW, the *William Holden Bell* case at Hughes, and the *James Harper* case at Systems Control Technology.

To correct this problem, the committee adopted this amendment which authorizes the Federal Government to obtain access to local criminal justice records when conducting eligibility investigations for (1) access to classified information, (2) assignment to or retention in sensitive national security duties, or (3) acceptance or retention in the armed services. Such a request is only permitted if the person under investigation consents to it in writing. Moreover, the criminal history record information obtained pursuant to this request would be afforded the same protections as provided by the Privacy Act.

This inability to review criminal record histories is causing severe delays in clearing employees for Federal work and contracts. In addition, it is impairing the Government's ability to evaluate the overall suitability of an individual for a sensitive position and, thus, decreasing the Government's ability to meet its obligations for maintaining and safeguarding classified information. Not surprisingly, hostile intelligence services are not overly intimidated by a government personnel security program like this where the proverbial left hand of the Government does not know or is not allowed to know what the right hand does.

ACTION OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

The referral of S. 1271 to the Committee on Governmental Affairs was restricted to section 603, which provides for an increase in pay for the Director of Central Intelligence from Level II to Level I of the Executive Schedule and for the Deputy Director of Central Intelligence from Level III to Level II.

The Committee on Governmental Affairs approved an amendment to delete section 603 from S. 1271. This would have the effect of retaining the current pay levels.

COMMITTEE ACTIONS

On June 27, 1985, the Committee on Armed Services, a quorum being present, approved the bill as amended and ordered it favorably reported by voice vote.

On July 29, 1985, the Committee on Governmental Affairs approved for reporting an amendment proposed by Senator Roth to delete section 603. The vote was as follows:

YEAS	NAYS
Mr. Roth	Mr. Stevens
Mr. Mathias	Mr. Cohen
Mr. Durenberger	Mr. Eagleton
Mr. Rudman	
Mr. Cochran	
Mr. Chiles	
Mr. Nunn	
Mr. Levin	
Mr. Glenn	
Mr. Gore	

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committees find no regulatory impact will be incurred in implementing the provisions of this legislation.

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT

The committees have complied with section 403 of the Congressional Budget and Impoundment Control Act of 1974 to the extent possible.

CHANGES IN EXISTING LAW

In the opinion of the committees, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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